

173 FERC ¶ 61,087
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and James P. Danly.

High Desert Power Project, LLC and
Middle River Power LLC

Docket No. IN20-6-000

ORDER APPROVING STIPULATION AND CONSENT AGREEMENT

(Issued October 23, 2020)

1. The Commission approves the attached Stipulation and Consent Agreement (Agreement) between the Office of Enforcement (Enforcement), High Desert Power Project, LLC (HDPP), and Middle River Power LLC (MRP) (collectively High Desert). This order is in the public interest because it resolves on fair and equitable terms Enforcement's investigation under Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2020), into whether High Desert violated any Commission rules, including the Anti-Manipulation Rule, 18 C.F.R. § 1c.2 (2020), related to its receipt of Residual Unit Commitment (RUC) awards and corresponding Bid Cost Recovery (BCR) payments in the California Independent System Operator (CAISO) market (the Investigation).
2. High Desert agrees to pay a civil penalty of \$390,000 and to pay disgorgement of \$176,000 plus interest to CAISO, and to be subject to compliance monitoring as provided in the Agreement. High Desert stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations.

I. Facts

3. High Desert leases and operates an 830 MW gas-fired, combined cycle generating facility located in Victorville, California that sells electricity into the markets operated by CAISO. MRP is an affiliate of HDPP that employs individuals that are authorized to make decisions on behalf of HDPP.
4. HDPP entered into an energy management agreement (EMA) with EDF Trading North America, LLC (EDF) that was effective August 1, 2016. Pursuant to that EMA, EDF began providing energy management services to High Desert, including acting as the Scheduling Coordinator (SC) for High Desert into the CAISO market.
5. For trade dates August 1, 2016, through October 15, 2016, High Desert submitted offers to sell RUC capacity into CAISO's day-ahead market as a price-taker in quantities less than or equal to High Desert's Resource Adequacy (RA) obligation. As a result, CAISO's software automatically set such offers to a price of zero.

6. On trade date October 16, 2016, High Desert started offering RUC capacity into CAISO's day-ahead market in quantities above High Desert's RA obligation at non-zero prices.

7. On October 20, 2016, relative to its non-zero RUC offers for October 21, 2016, High Desert obtained a RUC award for one hour even though the RUC clearing price for that hour was zero – well below High Desert's RUC offer price of \$149.98/MWh. EDF, on behalf of and as energy manager for High Desert, submitted a "ticket" through CAISO's online Customer Inquiry, Dispute & Information ("CIDI") program. The CIDI ticket, after describing the circumstances under which High Desert received the RUC award: (1) asked how such an award was possible; (2) claimed that such an award meant that CAISO owed High Desert a payment amount equal to its RUC award quantity multiplied by its RUC offer price; and (3) estimated the amount of such payment.

8. For trade days October 22-24, 2016, High Desert continued to receive certain RUC awards when the RUC clearing price was either zero or less than \$40/MWh – well below High Desert's RUC offer prices. Over the second and third days of this three-day period, as High Desert continued to receive RUC awards under such circumstances, High Desert incrementally raised its RUC offer prices from \$128.99 to \$178.09 to \$222.22 per MWh.

9. On the morning of October 24, 2016, around 8 am PPT (10 am CPT), CAISO – in response to the CIDI ticket for trade date October 21, 2016 – thanked EDF for bringing the issue to its attention and informed EDF that it had identified a software issue that it was working with its vendors to resolve.

10. Subsequent to CAISO informing EDF that it had identified a software issue, High Desert raised its RUC offer prices for trade date October 25, 2016 to \$249.83/MWh, just below the CAISO tariff-prescribed RUC offer cap of \$250/MWh. Later that afternoon, after receiving notice of High Desert's October 25 RUC Awards – High Desert received some amount of RUC award in roughly half of the 24 hours and its offer price was \$249.83/MWh (even though the CAISO RUC clearing price was zero for most of those hours and never above \$40/MWh) – EDF submitted four more days of CIDI tickets for the previous three trade dates of October 22-24, as well as its new October 25 awards, and asked whether CAISO would be keeping High Desert whole for its RUC awards based on its RUC offer prices.

11. These new tickets, unlike the October 20, 2016 CIDI ticket, did not repeat the previous question of how such RUC awards were possible, but: (1) stated that the awards meant that High Desert "should have been paid" amounts equal to the quantity of the RUC award in each hour multiplied by the difference between High Desert's RUC offer price and the RUC clearing price for that same hour; and (2) estimated the amount of such payments.

12. For trade dates October 26, 2016, through November 1, 2016, High Desert continued to offer RUC to CAISO at prices just below the offer cap of \$250/MWh. During this period, EDF continued to submit CIDI tickets to CAISO similar to those submitted for the trade dates of October 22-25. Also during this period, CAISO – in response to the CIDI tickets – continued to inform EDF that it had identified a software issue that CAISO was working to resolve.

13. High Desert's witness testified that, for trade dates October 20, 2016, through November 1, 2016, he believed that CAISO's RUC awards to High Desert "shouldn't have occurred."

14. High Desert cooperated with Enforcement during the Investigation.

II. Violations

15. Enforcement has concluded that High Desert knew or should have known that High Desert's potential BCR payments were based upon RUC awards that CAISO was awarding by mistake – due to a software issue.

16. Enforcement has concluded that, despite these circumstances, rather than continue to submit RUC offers based upon supply and demand fundamentals, High Desert submitted RUC offers in a manner that sought to maximize any BCR that might be awarded in violation of section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2.

III. Stipulation and Consent Agreement

17. Enforcement and High Desert have resolved the Investigation by means of the attached Agreement.

18. High Desert stipulates to the facts set forth in Section II of the Agreement, but neither admits nor denies the alleged violations set forth in Section III of the Agreement.

19. High Desert agrees to pay a civil penalty of \$390,000 to the United States Treasury. High Desert agrees to pay disgorgement of \$176,000 plus interest to CAISO.

20. High Desert agrees to submit an annual compliance monitoring report, in accordance with the terms of the Agreement, with the requirement of a second annual report at Enforcement's option.

IV. Determination of Appropriate Sanctions and Remedies

21. In recommending the appropriate remedy, Enforcement considered the factors described in the Revised Policy Statement on Penalty Guidelines,¹ including the fact that High Desert cooperated with Enforcement during the Investigation.

22. The Commission concludes that the Agreement is a fair and equitable resolution of the matters concerned and is in the public interest, as it reflects the nature and seriousness of the conduct and recognizes the specific considerations stated above and in the Agreement.

23. The Commission also concludes that High Desert's civil penalty is consistent with the Revised Policy Statement on Penalty Guidelines.²

24. The Commission directs High Desert to make the civil penalty and disgorgement payments as required by the Agreement within ten days of the Effective Date of the Agreement.

25. The Commission directs CAISO to allocate the disgorged funds in its discretion for the benefit of CAISO customers and upon approval by Enforcement of CAISO's plan for doing so.

The Commission orders:

The attached Stipulation and Consent Agreement is hereby approved without modification.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹ *Enforcement of Statutes, Orders, Rules and Regulations*, 132 FERC ¶ 61,216 (2010).

² *Id.*

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

High Desert Power Project, LLC and
Middle River Power LLC

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STIPULATION AND CONSENT AGREEMENT

I. INTRODUCTION

1. The Office of Enforcement (Enforcement) of the Federal Energy Regulatory Commission (Commission), High Desert Power Project, LLC (HDPP), and Middle River Power LLC (MRP), an affiliate of HDPP authorized to act on behalf of HDPP, and their divisions, sub-divisions, trade names, and business units (collectively or individually, High Desert) enter into this Stipulation and Consent Agreement (Agreement) to resolve a nonpublic, preliminary investigation (the Investigation) conducted by Enforcement pursuant to Part 1b of the Commission's regulations, 18 C.F.R. Part 1b (2020). The investigation addressed whether High Desert violated any Commission rules, including the Commission's Anti-Manipulation Rule, 18 C.F.R. §1c.2, related to its receipt of Residual Unit Commitment (RUC) awards and corresponding Bid Cost Recovery (BCR) payments in the California Independent System Operator (CAISO) market.

2. High Desert stipulates to the facts in Section II, but neither admits nor denies the alleged violations in Section III. High Desert agrees to: (a) disgorge to CAISO \$176,000 plus interest; (b) pay a civil penalty of \$390,000 to the United States Treasury; and (c) be subject to compliance monitoring as provided more fully below.

II. STIPULATIONS

Enforcement and High Desert hereby stipulate and agree to the following facts.

3. High Desert leases and operates an 830 MW gas-fired, combined cycle generating facility located in Victorville, California that sells electricity into the markets operated by CAISO. MRP is an affiliate of HDPP that employs individuals that are authorized to make decisions on behalf of HDPP.

4. HDPP entered into an energy management agreement (EMA) with EDF Trading North America, LLC (EDF) that was effective August 1, 2016. Pursuant to that EMA, EDF began providing energy management services to High Desert, including acting as the Scheduling Coordinator (SC) for High Desert into the CAISO market.

5. For trade dates August 1, 2016, through October 15, 2016, High Desert submitted offers to sell RUC capacity into CAISO's day-ahead market as a price-taker in quantities

less than or equal to High Desert's Resource Adequacy (RA) obligation. As a result, CAISO's software automatically set such offers to a price of zero.

6. On trade date October 16, 2016, High Desert started offering RUC capacity into CAISO's day-ahead market in quantities above High Desert's RA obligation at non-zero prices.

7. On October 20, 2016, relative to its non-zero RUC offers for October 21, 2016, High Desert obtained a RUC award for one hour even though the RUC clearing price for that hour was zero – well below High Desert's RUC offer price of \$149.98/MWh. EDF, on behalf of and as energy manager for High Desert, submitted a "ticket" through CAISO's online Customer Inquiry, Dispute & Information ("CIDI") program. The CIDI ticket, after describing the circumstances under which High Desert received the RUC award: 1) asked how such an award was possible; 2) claimed that such an award meant that CAISO owed High Desert a payment amount equal to its RUC award quantity multiplied by its RUC offer price; and 3) estimated the amount of such payment.

8. For trade days October 22-24, 2016, High Desert continued to receive certain RUC awards when the RUC clearing price was either zero or less than \$40/MWh – well below High Desert's RUC offer prices. Over the second and third days of this three-day period, as High Desert continued to receive RUC awards under such circumstances, High Desert incrementally raised its RUC offer prices from \$128.99 to \$178.09 to \$222.22 per MWh.

9. On the morning of October 24, 2016, around 8 am PPT (10 am CPT), CAISO – in response to the CIDI ticket for trade date October 21, 2016 – thanked EDF for bringing the issue to its attention and informed EDF that it had identified a software issue that it was working with its vendors to resolve.

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13. High Desert's witness testified that, for trade dates October 20, 2016, through November 1, 2016, he believed that CAISO's RUC awards to High Desert "shouldn't have occurred."

III. VIOLATIONS

14. Enforcement has concluded that High Desert knew or should have known that High Desert's potential BCR payments were based upon RUC awards that CAISO was awarding by mistake – due to a software issue.

15. Enforcement has concluded that, despite these circumstances, rather than continue to submit RUC offers based upon supply and demand fundamentals, High Desert submitted RUC offers in a manner that sought to maximize any BCR that might be awarded in violation of section 222 of the Federal Power Act (FPA) and the Commission's Anti-Manipulation Rule, 18 C.F.R. § 1c.2.

IV. REMEDIES AND SANCTIONS

17. For purposes of settling any and all claims, civil and administrative disputes and proceedings arising from or related to High Desert's conduct evaluated in Enforcement's Investigation, High Desert agrees with the facts as stipulated in Section II of this Agreement, but it neither admits nor denies the violations described in Section III of this Agreement. High Desert further agrees to undertake obligations set forth in the following paragraphs.

A. Civil Penalty

18. High Desert shall pay a civil penalty of \$390,000 to the United States Treasury by wire transfer within ten days of the Effective Date of this Agreement, as defined herein.

B. Disgorgement

19. High Desert shall disgorge to CAISO \$176,000 plus interest within ten days of the Effective Date of this Agreement, to be allocated by CAISO in its discretion for the benefit of CAISO customers and upon approval by Enforcement of CAISO's plan for doing so.

C. Compliance

20. High Desert shall make an annual compliance monitoring report to Enforcement for one year following the Effective Date of this Agreement, which shall be submitted no later than thirty days after the first anniversary of the Effective Date. After the receipt of the first annual report, Enforcement may, at its sole discretion, require High Desert to submit a second annual report for the following year.

21. Each compliance monitoring report shall: (1) identify any known violations of the CAISO Tariff or Commission regulations during the applicable period, including a description of the nature of the violation and what steps were taken to rectify the situation; (2) describe all compliance measures and procedures related to compliance with the CAISO Tariff and Commission regulations that High Desert instituted or modified during the applicable period; and (3) describe all CAISO and Commission-related compliance training that High Desert administered during the applicable period regarding its offering of High Desert into the CAISO market, including the dates such training occurred, the topics covered, and the procedures used to confirm which personnel attended.

22. Each compliance monitoring report shall also include an affidavit executed by an officer of High Desert stating that it is true and accurate to the best of his/her knowledge.

23. Upon request by Enforcement, High Desert shall provide to Enforcement documentation supporting the contents of its reports.

V. TERMS

24. The "Effective Date" of this Agreement shall be the date on which the Commission issues an order approving this Agreement without material modification. When effective, this Agreement shall resolve the matters specifically addressed herein that arose on or before the Effective Date as to High Desert and any affiliated entity, and their respective agents, officers, directors, or employees, both past and present.

25. Commission approval of this Agreement without material modification shall release High Desert and forever bar the Commission from holding High Desert, any affiliated entity, any successor in interest, and their respective agents, officers, directors, or employees, both past and present, liable for any and all administrative or civil claims arising out of the conduct covered by the Investigation, including conduct addressed and stipulated to in this Agreement, which occurred on or before the Agreement's Effective Date.

26. Failure by High Desert to make the disgorgement or civil penalty payments, or to comply with the compliance reporting obligations agreed to herein, or any other provision of this Agreement, shall be deemed a violation of a final order of the Commission issued pursuant to the Federal Power Act (FPA), 16 U.S.C. §792, *et seq.*, and may subject High

Desert to additional action under the enforcement provisions of the FPA.

27. If High Desert does not make the required civil penalty and disgorgement payments described above within the times agreed by the parties, interest shall begin to accrue at the rates specified at 18 C.F.R. § 35.19a(a)(2)(iii) from the date that payment is due, in addition to any other enforcement action and penalty that the Commission may take or impose.

28. This Agreement binds High Desert and its agents, successors, and assignees. This Agreement does not create any additional or independent obligations on High Desert, or any affiliated entity, its agents, officers, directors, or employees, other than the obligations identified in this Agreement.

29. The signatories to this Agreement agree that they enter into the Agreement voluntarily and that, other than the recitations set forth herein, no tender, offer or promise of any kind by any member, employee, officer, director, agent or representative of Enforcement or High Desert has been made to induce the signatories or any other party to enter into the Agreement.

30. Unless the Commission issues an order approving the Agreement in its entirety and without material modification, the Agreement shall be null and void and of no effect whatsoever, and neither Enforcement nor High Desert shall be bound by any provision or term of the Agreement, unless otherwise agreed to in writing by Enforcement and High Desert.

31. In connection with the civil penalty provided for herein, High Desert agrees that the Commission's order approving the Agreement without material modification shall be a final and unappealable order assessing a civil penalty under section 316A(b) of the FPA, 16 U.S.C. § 825o-1(b). High Desert waives findings of fact and conclusions of law, rehearing of any Commission order approving the Agreement without material modification, and judicial review by any court of any Commission order approving the Agreement without material modification.

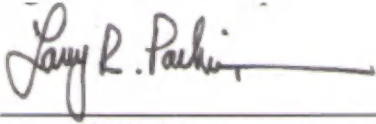
32. This Agreement can be modified only if in writing and signed by Enforcement and High Desert, and any modifications will not be effective unless approved by the Commission.

33. Each of the undersigned warrants that he or she is an authorized representative of the entity designated, is authorized to bind such entity, and accepts the Agreement on the entity's behalf.

34. The undersigned representative of High Desert affirms that he or she has read the Agreement, that all of the matters set forth in the Agreement are true and correct to the best of his or her knowledge, information and belief, and that he or she understands that the Agreement is entered into by Enforcement in express reliance on those representations.

35. This Agreement may be executed in duplicate, each of which so executed shall be deemed to be an original.

Agreed to and Accepted:



Larry R. Parkinson
Director, Office of Enforcement
Federal Energy Regulatory Commission

Date: 10/6/20



Mark Kubow
President
High Desert Power Project, LLC
President
Middle River Power LLC

Date: 10/5/20

Document Content(s)

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